

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

RANDY STERN, Individually, and as)
Administrator of the Estate of)
Annette Monachelli,)

Plaintiff,)

v.)

UNITED STATES OF AMERICA,)

Defendant.)

Docket No. 2:14-cv-176

LOCAL RULE 26(d)(2) AFFIDAVIT OF OWEN C.J. FOSTER

I, Owen Foster, submit this affidavit pursuant to Local Rule 26(d)(2) and in support of Defendant United States' Motion For Finding Of Contempt And Ordering Production Of Documents Against eClinicalWorks, LLC (the "Contempt Motion"):

1. I am an Assistant United States Attorney and employed by the United States Attorney's Office for the District of Vermont. I represent the United States in the above captioned matter.

2. I hereby certify that counsel for the United States and for eClinicalWorks, LLC have conferred in good faith to resolve the discovery disputes at issue without court intervention.

3. On February 5, 2015, I conferred with ECW's lawyers, Keith Aurzada and James Bookhout of the law firm Bryan Cave, for approximately thirty minutes in an attempt to resolve the disputes at issue in the United States' Contempt Motion.

4. Based on the meet and confer conducted on February 5th, the United States agreed to modify certain requests in an effort to resolve these disputes short of court intervention, and ECW agreed to follow up on certain issues raised during the meet and confer.

5. On February 9, 2015, I wrote Keith Aurzada with a list of outstanding issues relating to the subpoena and agreed to delay filing the Contempt Motion for one week so that ECW could respond to the issues raised.

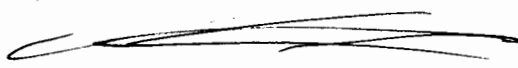
6. On February 19, 2015, I advised Mr. Aurzada by email that more than a week had passed and that ECW had failed to respond as per our agreement.

7. On February 26, 2015, I conferred again with ECW's lawyers, Keith Aurzada and James Bookhout of the law firm Bryan Cave, for approximately fifteen minutes in an attempt to resolve the disputes at issue in the United States' Contempt Motion.

8. The unresolved issues raised in the Contempt Motion are ECW's failure to produce documents relating to: (1) customer complaints of a nature similar or related to the failures here, which include missing orders, missing alerts, screens not populating properly and failures in the lab, x-ray, diagnostic imaging functions, and lab interface function, (2) arbitrations, litigations, civil/criminal/regulatory investigations/inquiries/demands relating to alleged failings in ECW's software or alteration/destruction/modification of records, and (3) identification of software developers/engineers who have left ECW and who had either worked on SFP related projects, or were involved in developing the software product used by SFP (and others). This would include their name and last known contact information, as well as any resignation and/or termination letter.

9. The reason for the unresolved issue is that ECW has asserted that it has no documents responsive to Request Nos. 3 and 4, and that it objects to Request No. 9 seeking information relating to former software developers and engineers.

Executed March 4, 2015, at Burlington, Vermont.



Owen C.J. Foster, AUSA